

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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|---------------------------|---|-------------------|
| DARREN KEITH MARTIN, | : | |
| | : | NO. 1:02-CR-00105 |
| Petitioner, | : | |
| | : | ORDER |
| | : | |
| v. | : | |
| | : | |
| | : | |
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Respondent. | : | |

This matter is before the Court on the Petitioner Darren Keith Martin's Motion to Expand the Records and Request for Evidentiary Hearing Pursuant to Rule 7(b) and 8(b) of the Federal Rules Governing § 2255 Proceedings (doc. 50), the Government's Response thereto (doc. 51), and Petitioner's Reply (doc. 52). Petitioner is proceeding pro se in this matter. On February 9, 2004, Petitioner filed a Motion for Reconsideration of Order Denying Motion for Discovery Material (doc. 38). On March 15, 2004, Petitioner then moved to supplement the Motion for Reconsideration (doc. 41). Petitioner's counsel at the time, C. Ransom Hudson, then filed a Motion to Withdraw as Attorney (doc. 40), citing a breakdown in communications and irreconcilable differences. In this Court's Order, dated April 6, 2004, the Court granted C. Ransom Hudson's Motion to Withdraw and ordered the Petitioner to file a notice to the Court declaring his pleadings (docs 38, 41) as either a Section 2255 Motion or to withdraw the pleadings (doc. 42). On April 22, 2004, Petitioner notified the Court that his pleadings were to be construed as

a Section 2255 Motion (docs. 43, 44). The Government then filed its response to Petitioner's Section 2255 Motion on June 14, 2004 (doc. 48).

The Court on October 12, 2004 ordered C. Ransom Hudson to provide an affidavit to the Court addressing Petitioner's claims of ineffective assistance of counsel (doc. 49). C. Ransom Hudson, due to errors unknown to the Court (presumably electronic filing issues) did not receive a copy of the Order. Upon learning of the Order, C. Ransom Hudson took the steps necessary to comply with the Court's Order. He contacted the Petitioner by letter to obtain Petitioner's permission to submit the affidavit, in consideration of attorney/client privilege issues. The Petitioner, per his current Motion, is refusing to give permission to C. Ransom Hudson to submit the affidavit, and now requests an evidentiary hearing on his Section 2255 Motion (doc. 50).

Pursuant to Rule 7(b) and 8(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, Petitioner seeks (1) for an expansion of the record to include the letter addressed to the Petitioner from C. Ransom Hudson dated October 19, 2005 and (2) an evidentiary hearing to determine the merits of his claim of ineffective assistance of counsel (doc. 50). The Government responds, noting Petitioner has implicitly waived his attorney-client privilege as it relates to his ineffective assistance of counsel claim (doc. 51 citing In re Lott, 424 F.3d 446, 452-54 (6th Cir. 2005)). The Government notes that Petitioner has not responded to the request of C. Ransom Hudson, as stated in his letter to Petitioner dated October 19,

2004. The Government asserts that it is unclear whether Petitioner is seeking to prohibit the submission of an affidavit by his trial counsel thereby affirming the existence of the attorney-client privilege (doc. 51). The Government states, "[Petitioner] cannot hide behind the privilege if he is relying upon privileged communications to make his case. Petitioner cannot use the attorney-client privilege as both a shield and a sword" (doc. 51).

Ultimately, the Government urges the Court to hold the Petitioner's Motion to Expand the Records and Request for an Evidentiary Hearing in abeyance pending Petitioner's written submission of his attorney-client privilege (Id.). The Court agrees. Petitioner is ORDERED to respond to C. Ransom Hudson, either granting permission to C. Ransom Hudson to submit the affidavit as previously ordered by this Court or explicitly rejecting the request of C. Ransom Hudson to provide the affidavit. The Court will address remaining issues after Petitioner has responded.

SO ORDERED.

Dated: January 19, 2006

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge